FILE COPY

FILED
NOV 13 1933
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 80.

LOUIS H. MAY, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA and ROYAL INDEMNITY COMPANY,

Petitioners,

—against—

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT,

Respondent.

REPLY BRIEF FOR PETITIONERS.

D. ROGER ENGLAR,
T. CATESBY JONES,
HENRY N. LONGLEY,
Counsel for Petitioners.

INDEX.

PAGE

I. Answer to respondent's argument as to the interpretation of Section 3 of the Harter Act (U. S. C. Title 46, Section 192)..... 1

II. Reply to respondent's argument on the facts..... 7
(a) The Alleged Negligence of the Pilot..... 7
(b) The Bent Rudder..... 8

Appendix i

TABLE OF CASES CITED:

Louis-Dreyfus & Co. v. *Paterson Steamships, Ltd.* (opinion not as yet reported; a copy is attached as an appendix to this brief)..... 1, i

Steamship Willdomino v. *Citro Chemical Co.*, 272 U. S. 718..... 13

Wilderoft, The, 201 U. S. 378, 388, 9..... 8

STATUTES CITED:

Harter Act (Act of February 13th, 1893; U. S. C. Title 46, Section 192)..... 1, 2, 3, 4, 5, 6

Limitation Act (Act of March 3rd, 1851; U. S. C. Title 46, Section 183)..... 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 80.

LOUIS H. MAY, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA and ROYAL INDEMNITY COMPANY,

Petitioners,

—against—

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT,

Respondent.

REPLY BRIEF FOR PETITIONERS.

I.

Answer to respondent's argument as to the interpretation of Section 3 of the Harter Act (U. S. C. Title 46, Section 192).

Since our principal brief was filed, the Circuit Court of Appeals for the Second Circuit has filed an opinion which is peculiarly interesting in connection with the present case. This opinion was rendered in the case of *Louis-Dreyfus & Co.* v. *Paterson Steamships, Ltd.* As the decision is not yet reported, we attach a copy as an appendix to this brief.

We quote from the *Louis-Dreyfus* case as follows:

> "L. HAND, *Circuit Judge*: This case now comes before us after a second trial following our decision reported in 43 Fed. (2) 824. * * * Since our opinion this court has decided the case of *May* v. *Hamburg*,

63 Fed. (2) 248, and held, or at least intended to lay down, that section three of the Harter Act excused faults of navigation, if the owner used due diligence to make the ship seaworthy as to all that could have contributed to the damage; but that seaworthiness irrelevant to the loss was not a condition precedent to the excuse. The question had, perhaps, been unsettled in this court, and although *all of us now sitting are of another mind*, we will follow *May* v. *Hamburg*, until the Supreme Court, which now has the case before it on certiorari, settles the point." (Italics ours.)

The above quotation affords a striking illustration of the sharp difference of opinion among the judges of this circuit, as to the proper interpretation of Section 3 of the Harter Act.

* * * * * * * * * * *

The respondent's argument fails to distinguish between cases dealing with negligent navigation and cases dealing with unseaworthiness or other excepted causes. For this reason many of its citations are wholly irrelevant. As we pointed out in our principal brief, a shipowner's exemption in respect of unseaworthiness is in no way dependent on the Harter Act. Even before that Act was passed, a shipowner could legally contract for exemption from damage due to latent defects or other unseaworthiness not resulting from any negligence on his part. Such a contractual exemption, of course, would not be invalidated by other unseaworthiness which was due to negligence, but which did not contribute to the loss. The same is true of various other exceptions which were valid at common law, as, for example, against perils of the sea. It was only in respect of the negligence of himself and his servants that the carrier could not contract for exemption at common law; and it is only in cases involving such negligence

that the condition of the third section of the Harter Act becomes important. Citation of cases dealing with the Limitation Act (U. S. C. Title 46, Section 183), and cases of damage resulting from unseaworthiness and perils of the sea, only tend to confuse the issue.

A similar confusion of thought pervades the respondent's argument that the construction for which the petitioners contend would lead to absurd and illogical results. It will scarcely be suggested that there was anything absurd or illogical about the law of this country as it stood for a hundred years before the Harter Act was passed; and yet the law is precisely the same today where the condition of Section 3 of the Harter Act has not been fulfilled. Respondent's whole argument on this point reads as though the liability asserted by the petitioners were imposed by the Harter Act. If this were true, there might be some force in the respondent's argument. As pointed out in our principal brief, however, the true situation is entirely different; the respondent's liability arises under the general maritime law, from the negligence of its servants. As to such negligence, a common carrier cannot exempt himself except by compliance with Section 3 of the Harter Act; and in the absence of such compliance, the carrier is in precisely the same position as though the Act had never been passed.

We submit that there is nothing arbitrary or harsh in the construction for which the petitioner contends. By the third section of the Harter Act, Congress confers a valuable privilege upon shipowners. This privilege is conditional, but the condition is neither harsh nor unreasonable. On the contrary, it lays down a rule which is eminently fair and easily fulfilled. The respondent's discussion of trifling defects is beside the point. A vessel may have trifling defects and still be seaworthy. Moreover, she is not even required to be seaworthy; the only requirement is that the owner use due diligence to make her seaworthy. Certainly,

this would appear to be a sufficiently liberal standard of conduct; but it does not satisfy the respondent. The respondent's position is that it must have the option to comply with the condition or not as it sees fit; taking its chances as to whether or not its negligence happens to cause any damage. The lack of diligence may not cause any damage; or if it does, that fact may never become known. We submit that the fallacy of such an argument is apparent. Congress has, in effect, divided shipowners into two classes. Shipowners may, if they choose, ignore the Harter Act. If they do, the Act imposes no additional burden on them, but leaves them exactly where they were before the Act was passed. On the other hand, shipowners may, if they see fit, enter a privileged class by complying with the condifions set forth in the Act. Thereupon they become entitled to certain immunities which they could not obtain otherwise. We submit, however, that there is no middle ground. The language of the Act makes it clear that only by using due diligence to make the ship *"in all respects"* seaworthy, can the owner claim the immunity which it confers.

The Harter Act establishes a standard of conduct. Violation of that standard does not carry with it any penalty, but merely the withholding of a privilege. In this respect the terms of the Act are extremely mild. One who drives an automobile sixty miles an hour is subject to a fine, and possible imprisonment, notwithstanding his action may have been entirely harmless. He is punished not because he has done any harm, but because such punishment is deemed the most effective way of enforcing a standard of care. He may do harm next time; or some less skillful driver may do harm by going at the same speed. If the State or some civic association offered a gratuity to all motorists who never exceeded thirty miles per hour, it would scarcely be suggested that this gratuity could be

claimed by a motorist who frequently exceeded the stipulated speed, on the ground that he had never caused any damage.

The effects of bad conduct and bad example are imponderable. A careless attitude on the part of the owner may well affect the attitude of the crew. In this case it was known that the steering gear of the "Isis" was seriously damaged. She was sailed hurriedly at night, without a thorough examination of her rudder, which was known to be at an angle of 45° to the upper end of the stock. The man who was to give her a certificate of seaworthiness had not even seen her; but it is claimed that he would have issued a certificate the following day. All of this was arranged by the marine superintendent and not by the master. The master testified as follows (R. 129):

> "A. My boss, Captain Reichenbacher, he told me, 'I fixed it up with the seaworthy part, with Mr. Julicker,' and took it over to Hamburg. He was going to train to Hamburg.
>
> Q. Captain Reichenbacher was going to Hamburg? A. Yes, this was 7 o'clock at night.
>
> Q. And the certificate was to be sent where? A. He said he is going to fix it up with Mr. Julicker, and he is taking the seaworthy certificate along with him to Hamburg, so I shouldn't worry about that."

The only finding on the subject is that due diligence was not used in the examination made. Certainly the atmosphere in which the vessel sailed was not conducive to the highest care on the part of anyone concerned. Congress may have had such considerations in mind in framing the third section of the Harter Act. Whether it did or not we submit that it expressed itself clearly, and it is not the function of the courts to rewrite the statute.

In arguing that Section 3 of the Harter Act has no application to the acts of the owner in an intermediate port, the respondent says (at p. 48):

> "The Act makes its requirements as of the time and place when the ship breaks ground. It cannot, by judicial construction, be made to repeat those requirements at other times and places."

The respondent cites no authority for this statement; nor does it point to any language of the Act which tends to sustain its argument. On the contrary, the third section of the Harter Act provides in the most general terms for the exercise of due diligence by the owner. Ordinarily, of course, no duty rests upon the owner excepting at the original port of shipment; everything which is done later is within the scope of the duties ordinarily delegated to the master. Wherever the owner does intervene, however, and assumes any duty affecting the seaworthiness of the vessel, he falls squarely within the language of Section 3 of the Harter Act. "Judicial construction" is required not to bring such acts within Section 3, but to exclude them from the operation of that Section. The respondent apparently concedes that if, at the beginning of the voyage, it is known that something will be required at an intermediate port to keep the vessel seaworthy, the owner is bound to supply this need under pain of forfeiting his protection under Section 3 of the Harter Act. It argues, however, that the same rule does not apply if the need arises at an intermediate port, even if the owner himself intervenes and undertakes to decide what shall be done. We know of no basis for such a distinction and it certainly finds no support in the language of the Harter Act.

II.

Reply to respondent's argument on the facts.

(a) *The Alleged Negligence of the Pilot.*

In Appendix A to its brief, the respondent discusses at very considerable length the errors of the deceased pilot. It appears that the pilot was not guilty of a single momentary lapse of skill or judgment, but committed a whole series of gross errors. To use the respondent's own expression (Appendix, p. iii):

> "The entire maneuver was bungled."

Moreover, the same pilot was in command of the "Isis" at the time of the first stranding while she was bound up the river to Bremen (R. 161). As stated by the Commissioner:

> "It is not disputed that this stranding was caused by negligence in navigation" (R. 503).

Such conspicuous lack of skill as the pilot is said to have displayed in the present case, inevitably suggests doubt as to his general competence to direct the navigation of the flotilla under his command. One would naturally expect that the proof of his bad judgment and lack of skill in the present case would be coupled with very full proof of his previous successful experience in directing the navigation of crippled vessels assisted by tug boats, down the Weser River at night. The record is silent, however, on this very important point. It does not appear that the pilot had ever participated in the navigation of a disabled vessel, excepting when the "Isis" was brought up to Bremen after the first stranding. That trip was begun and largely completed in daylight; the vessel was assisted by *fire* tugs;

and it does not appear what, if any, part the pilot took in directing the movements of this flotilla after the stranding. Moreover, the logbook states that:

> "Even for these five towboats it was very difficult to hold the ship in the channel and the ship's own machinery had to be used in addition right along because of the heavy sheering of the ship toward starboard and because the steering engine motor commenced to get warm, it was assumed that the rudder stock was damaged" (R. 482).

Apparently, the pilot was selected to take the "Isis" out largely because of his experience in bringing her in (R. 161), on which occasion she stranded and sustained serious damage through his negligence. Apart from this there is no evidence as to the pilot's qualifications for navigating a flotilla of this character, excepting the statement of respondent's marine superintendent that he was "a very experienced pilot" (R. 161).

We submit that the absence of proof on this vital issue, as to which the respondent has the burden, is fatal to respondent's case. *The Wildcroft*, 201 U. S. 378, 388-9.

(b) *The Bent Rudder.*

It is significant that respondent finds it necessary, in numerous instances, to disregard the findings of the Courts below, and devotes a large part of its brief to the discussion of evidence.

As to the examination made after the first stranding, we quote as follows from the Commissioner's Report (R. 522):

> "None of the witnesses found this distortion when the vessel was drydocked at Bremen the first time, but it is clear from the evidence of the respondent's

witnesses that the examination which was made might not, and probably would not, have revealed it. (Exhibit 13, Asmus, 113-114.)"*

On the question whether the bent rudder contributed to the second stranding, there is certainly no finding below that it did not physically contribute to some extent. The extent of its effect would, of course, depend upon the speed of the vessel, and it is significant that one of the faults charged against the pilot is proceeding at excessive speed. Even more significant is the respondent's allegation that the speed of the flotilla just before the stranding was greater than the average speed had been up to that time (Respondent's Brief, Appendix A, p. 1). If it be true that the speed of the "Isis" was increased just before the accident, the effect of her bent rudder would likewise be increased. It must be borne in mind that neither the pilot nor anyone else on the "Isis" knew that the rudder was bent. They had been proceeding at very slow speeds and may not have observed its effect. Even a slight increase in speed may have exaggerated the effect of the bent rudder sufficiently to bring about disaster.

The respondent suggests that the finding of the Seeamt, that the "Isis" tended to sheer to starboard, refers to her trip up the river after her first stranding, and not to her trip down the river prior to the second stranding. In answer to this suggestion we quote as follows from the report of the Seeamt (which is not analogous to our Local Inspectors, but is a Court of Admiralty,—R. 468):

> "In judging all the facts of the case, it must be borne in mind that the *steering capacity of the entire flotilla was naturally curtailed* firstly because there was relatively little water under the keel and then because the four vessels connected with each

* (The references to the present record are 246-7.)

other formed a unit and developed only a slow speed. *Furthermore during the passage from Bremen to Vegesack the SS 'Isis' evidently tended to swing to starboard.* The reason for this has not been quite found beyond all objection. Apparently the master did not notice this swinging to starboard because the bend of the fairway was at first in the same direction, Witness Capt. Zey, master of the tug 'Eversand' has testified that he did not at all notice this swinging to starboard of the SS 'Isis'. The Admiralty Court does not connect this swinging of the vessel with the fact that later, when docking the vessel, it was found that the back pieces of the rudder stood a few degrees to starboard. As it appears from the testimony of witnesses that the SS 'Isis' left the dock of the Weser Company Ltd. with the rudder well secured and standing amidships, it is to be supposed that the twist in the rudder was caused only through the grounding at Vegesack.

* * * * * * * *

"No fault attaches to the Master for this accident, either. *It must be attributed to* the coincidence of several unfavorable circumstances—*limited steering capacity* of the vessel, strong wind coming almost from athwart and an exceptionally strong tide current running against the vessel at an unfavorable site" (R. 478-9). (Italics ours.)

From the foregoing quotations it is apparent that the Seeamt found that the "Isis" *did* tend to sheer to starboard while proceeding down the river to Vegesack. It was unable to explain this tendency to sheer because, on the evidence before it, the Court assumed that the bend in the rudder blade occurred at the time of the second stranding. It is clear from its opinion that if it had had before it the evidence submitted to the Commissioner, which showed

that the rudder blade was bent at the time of the first stranding, the Seeamt would have found in this fact a natural and sufficient explanation of the otherwise unexplained tendency to swing to starboard.

We call attention also to the fact that the Seeamt considered that one of the important factors contributing to the disaster was the "limited steering capacity" of the flotilla. In this connection we refer to the testimony of the respondent's master and marine superintendent that, at the time in question, it was a difficult and hazardous matter even for a vessel in perfect condition to navigate the Weser. (R. 117, 168).

The decision below appears to have been based primarily upon the testimony of three experts who appeared before the Commissioner. One of these, Captain Davis, was undoubtedly a man of great skill and experience. We have no quarrel with his testimony, which is discussed in our principal brief (at pp. 40-43).

Huseby had never commanded a ship outside New York harbor, where his experience consisted in towing ships between different points in the harbor (R. 433-4). His only sea experience had been as a sailor before the mast and as a quarter-master (R. 434-5).

French, the third of the respondent's expert witnesses, had never had any sea experience at all (R. 377). He repeatedly pointed out that he was not a navigator and was not competent to express opinions on such subjects as were being discussed (R. 383, 385). However, French also testified as follows (R. 393):

> "Q. You will agree with me, will you not that even a 5 degree bend will have some effect on the navigation of the ship? A. I should say it would.
>
> Q. You have understood I have been talking about degrees? A. Yes.

> Q. You will agree that 5 degrees will have some effect on the navigation of the ship? A. It ought to have some effect."
>
> * * * * * * *

It appears, therefore, that at least two out of the respondent's three experts agreed that the bend in the rudder would have some effect on the navigation of the "Isis". Indeed, Davis quite frankly stated that it was desirable for the navigators of the vessel to know of the bend; and suggested that it would have been better not to lash the rudder at all, but to let it swing free (see our Principal Brief, p. 42). When this testimony is considered in connection with the testimony of the respondent's master and marine superintendent that they would not have sailed the vessel if they had known of the bend in the rudder, it can readily be seen why the respondent could not obtain a finding in the lower courts that the bent rudder had no effect on the steering of the "Isis".

Respondent cites the case of a vessel which was navigated for a considerable period with a bent rudder without the bend being noticed. This is entirely possible. Vessels are not steered by placing the steering wheel in any particular predetermined position in order to bring about any desired change of course. Steering is an entirely practical process. The quartermaster turns the wheel one way or the other as required to keep the vessel on the desired course. Thus, he automatically and unconsciously counteracts the effect of a bend in the rudder. The situation is entirely different, however, when the rudder is lashed amidships. As Captain Davis so well said, if the existence of the bend were known

> "the rudder could be secured in such a position that the effect would be neutral" (R. 400-1).

This is quite true; but where, as here, the bend was not known, and the rudder was lashed amidships, the effect of the bend was not neutral, but positive.

Respectfully submitted.

D. ROGER ENGLAR,
T. CATESBY JONES,
HENRY N. LONGLEY,
Counsel for Petitioners.

NOTE: In the table of cases at the beginning of our principal brief, we neglected to give the citation of *The Willdomino* in this Court. We desire to add that citation at this time. *Steamship Willdomino* v. *Citro Chemical Co.*, 272 U. S. 718.

APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

LOUIS LOUIS-DREYFUS and CHARLES LOUIS-DREYFUS, doing business under the firm name and style of Louis-Dreyfus & Co.,

Appellants.

—against—

PATERSON STEAMSHIPS, LTD.,

Appellee.

Before—L. HAND, SWAN and MACK, *Circuit Judges.*

Appeal from a decree in the admiralty of the District Court for the Western District of New York dismissing a libel *in personam* for cargo damages.

BIGHAM, ENGLAR, JONES & HOUSTON and BURKE & DESMOND (Henry N. Longley, Thomas C. Burke, and Ezra G. Benedict Fox, of counsel), proctors for the appellants.

HOLDING, DUNCAN & LECKIE (Frederick L. Leckie, of counsel), proctors for the appellee.

L. HAND, *Circuit Judge*: This case now comes before us after a second trial following our decision reported in 43 Fed. (2) 824. The judge had originally dismissed the libel, and we should have sustained his decree except for some testimony that the pumps of the "Advance" were so rigged that the only suction in the cargo hold was from a pump in the engine room. Two expert witnesses had said that

this made the ship unseaworthy, and the respondent had not contradicted their testimony. We felt bound, therefore, to allow this issue to be tried. The parties interpreted our words a little more broadly than we intended, and the evidence on the second trial was directed not only to the pumps, but to the bulkheads and valves in general. At the conclusion of the proof, the judge found the ship seaworthy as to all these, and again dismissed the libel. Since our opinion this court has decided the case of *May* v. *Hamburg*, 63 Fed. (2) 248, and held, or at least intended to lay down, that section three of the Harter Act excused faults of navigation, if the owner used due diligence to make the ship seaworthy as to all that could have contributed to the damage; but that seaworthiness irrelevant to the loss was not a condition precedent to the excuse. The question had perhaps been unsettled in this court, and although all of us now sitting are of another mind, we will follow *May* v. *Hamburg*, until the Supreme Court, which now has the case before it on certiorari, settles the point. Had the pumps been actually out of repair, the damage might have resulted from their neglect. But this was not true; they were all set in motion and could not control the leak. They were not, as the engineer supposed, in fact rigged so that the engine pump alone sucked the cargo hold. And for that matter that pump continued to work until the ship was tied up, and it became apparent that the leak was too great to be kept down. Any leak in the bulkheads served at once to protect the grain from the water entering the cargo hold, and to allow the suctions in the forepeak and the engine room to assist. Thus, if *May* v. *Hamburg* be right, the libellant loses.

We might rest the case on this, but should that decision be reversed, we should have to decide as to the general seaworthiness of the ship, and as we think that the respondent has carried the burden of proof on that issue anyway, we can finally dispose of the suit now.

As we have said, there were suctions to the cargo hold operated directly from the boilers. Indeed, the libellant does not appear to dispute this; if it does, its position is clearly untenable. It does insist, however, that there is no proof that the pumps were in good condition, or that the bulkheads were proper. As to the pumps, two of the libellant's witnesses had inspected her in the spring of 1927, a few months before the strand; one, only at that time. While their attention was not specifically directed to the pumps, still they found them in good condition. Three years later, during which she had been out of commission, one of these witnesses reexamined her and three more for the first time. They said that the pumps appeared to be still in sound shape. The libellant called two witnesses: one of these had examined the "Advance" shortly after she went ashore, though not with this point in mind, and both reexamined her three years later. They found the pumps in bad condition, and thought that the defects had existed when the ship broke ground. The question is one on which we must accept the decision of the judge who saw the witnesses, even if there had been no testimony that after the strand all the pumps worked properly.

A more difficult question arises from the condition of the bulkheads. There were two of these; one at the forward end of the cargo hold, which made a forepeak, the other separating the cargo hold from the engine room. When the ship was examined in 1930 it was found that these had separated along the skin of the ship, in some cases as much as six inches, so as not to be water-tight. Whether this condition existed when the ship broke ground, is left in some doubt, but, as the respondent has the burden, we will assume *arguendo* that it did. There was a dispute whether in a wooden ship iron bulkheads can be made water-tight; but even if they cannot, it does not follow that such wide cracks are tolerable. We think that bulkheads in such

condition as we assume these to have been, would be unseaworthy, if more than cargo partitions were necessary at all. Upon that issue the experts also disagreed; the libellant's insisting that water-tight bulkheads were necessary; the respondent's saying that in a "composite" ship like the "Advance", they were not. Though there were no statutory or administrative rules requiring such ships to be so equipped when used in Lake travel, those in the "Advance" must have been originally intended to be more nearly tight than they later became. However, this is irrelevant, if the law imposed upon the owner no duty to have anything but cargo partitions. The ship was seaworthy if she conformed to the requirements of her class and service, even though her owner failed to keep her up to a higher standard which he had gratuitously assumed. *The British King*, 89 Fed. Rep. 872, affirmed on opinion below, 92 Fed. Rep. 1018 (C. C. A. 2). It is true that two of the respondent's witnesses testified on cross examination that if there were bulkheads, they should be kept as tight as possible. Possibly they meant that they would not pass her otherwise, though they did not expressly say so. But in any case they repeatedly said that there was no need of water-tight bulkheads, and we cannot read their testimony as a whole to mean that the "Advance", even with her bulkheads leaking, was unfit for her service. Of course a ship with compartments is safer than one without: especially is this true of the forepeak where collisions are most likely. Probably this was the only bulkhead important in the "Advance", which could scarcely have lived with either her cargo hold or her engine room flooded. But owners are not obliged to construct ships of the highest safety; seaworthiness is a resultant of the added safety from the supposed device and its cost; ordinarily it depends upon the standard generally accepted in the trade for which the ship is used, though certainly in the end the court sets the standard. *The T. J. Hooper*, 60 Fed. (2) 738, 740 (C. C. A. 2). There does not seem

to us occasion here to advance beyond the accepted requirements. With passenger ships it might well be different, but here we have a question of property alone. Moreover, the Lakes are not like the high seas. "Composite" vessels, like wooden ones, had by 1927 been generally displaced by steel on the Lakes; but they were still passed to carry cargo, as they had done for many decades before, notwithstanding the absence of any water-tight compartments. We are not prepared in this instance to overrule the opinion of the calling, and say in effect that such ships must be retired.

The libellant finally argues that the "Advance" was unseaworthy, because her chief engineer did not know that she had suctions leading from the cargo hold to pumps harnessed directly to the boilers. *The Elkton*, 49 Fed. (2) 700 (C. C. A. 2). He so swore and probably so understood in August, 1927, though his testimony was given eighteen months after the accident. The second engineer was properly advised in any event, and would probably have undeceived his chief, had he failed to start all pumps. But quite aside from this, the point is ill taken anyway. The theory back of the doctrine is that the ship's sufficiency depends not only on her gear, but on the presence of a crew so informed as to be able to handle it; and it seems to us extravagant to suppose that in an emergency a master or an engineer would not start all the pumps available. This was especially the case in the "Advance" which had limbers through the bulkheads. Indeed, the event proved the truth of this, for all pumps were started after the strand. Therefore, even if the engineer did not know the actual rigging of his pumps, his ignorance was not a vital element in the general competence of the personnel on board.

It does not seem to us necessary to discuss the other points raised. We see no ground to upset the conclusions of the judge upon the sharply contested issues before him.

Decree affirmed.